SUPREME COURT, U.S.
FILED

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011370 MAR 15 2002

No. OFFICE OF THE CLERK

In The
Supreme Court of the United States

MICHAEL J. DEE pro se
Petitioner

v.

STATE OF MAINE
Respondent

On Petition For a Writ Of Certiorari
To The Supreme Judicial Court Of the State Of Maine

PETITION FOR WRIT OF CERTIORARI

MICHAEL J. DEE
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178P

QUESTION PRESENTED FOR REVIEW

1. Does the due process clause of the Fourteenth Amendment of the United States Constitution permit the police of Portland, Maine to be arbitrary in the enforcement of the marijuana laws which causes injury to fundamental rights?

2. Does the due process clause of the Fourteenth Amendment of the United States Constitution permit the Maine Supreme Judicial Court to arbitrarily exclude marijuana as property and equal protection from unjustifiable deprivation?

3. Does the due process clause of the Fourteenth Amendment permit the legislative branch of the federal government to arbitrarily classify marijuana as a controlled substance?

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OPINION BELOW

The petitioner ask this Court to review the Maine Supreme Judicial Court's1 decision in *Dee v State of Maine*, Decision No. Mem 02-1, dated January 16, 2002. The Cumberland County Superior Court opinion is Doc. No. CV-00- 648 dated at Portland, Maine April 10, 2001. Both opinions are reproduced in the appendix along with the petitioner's complaint in superior court,1A-5A.

JURISDICTIONAL BASIS

This petition asks the Court to review the January 16, 2002 opinion and judgment of the Maine Supreme Judicial Court. Should the Court grant the petition, it would have jurisdiction pursuant to 28 U.S.C. section 1257(a). Notification has been made to the Solicitor General. as required by Rule 29.4(b). Title 28 U.S.C. section 2403(a) applies.

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED WITH THE CASE

United States Constitution Amendment XIV, section 1 "No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

Title 14 M.R.S.A. section 5953 Courts of record within their respective jurisdiction shall have the power to declare rights, status and other legal relations.

Title 22 M.R.S.A section 2383 (1992 & Supp. 2001) Marijuana: Possession of a usable amount of marijuana is a civil violation for which a forfeiture of not less than $200 nor more than $400 shall be adjudged for the first offenses within a six year period. A forfeiture of $400 shall be adjudge for 2nd and subsequent offenses within a 6 year period.

21 U.S.C. section 812(b)(1) (1988) By Definition Schedule I Controlled Substances include all drugs or substances which: (A) have a high potential for abuse, (B) have no current accepted medical use in treatment in the United States, and (C) have a lack of safety for use under medical supervision.

STATEMENT OF THE CASE

Plaintiff filed for Declaratory Judgment under Chapter 707 Declaratory Judgments Act Title 14 M.R.S.A. section 5951 et seq. on October 31, 2000 in Cumberland County Superior Court. Petitioner claimed Portland Police publicly used arbitrary power on October 27, 1999, by not enforcing Title 22 M.R.S.A section 2383, possession of a useable amount of marijuana, 2A.

Dee claimed injury to the 14th Amendment at 2 of the complaint. Dee claimed arbitrary power violates fundamental rights to due process of law at 6 of the complaint, 5A.

In Superior court, violation of due process clause of the 14th Amendment was raised on page four in Dee's Motion for Judgment on the Pleadings. In Dee's Objection to Cross Motion, the 14th Amendment was mentioned on page two.

On page two of the brief to the Maine Supreme Judicial Court, Dee's claimed arbitrary power violates due process of law. Due process of law is a fundamental right guaranteed by the 14th Amendment.

Superior Court Justice Crowley claims the plaintiff's petition "fails to demonstrate the existence of a justiciable controversy", 3A. The arbitrary enforcement of the marijuana laws is "insufficient to establish a real controversy between Dee and the State of Maine," 4A. Justice Crowley also dismissed complaint by the doctrine of *res judicata*, 2A.

The Maine Supreme Judicial Court affirmed Justice Crowley's claim to the doctrine of *res judicata*. The law

court held that "Dee is precluded from relitigating the constitutionality of the laws prohibiting possession of marijuana, see 22 M.R.S.A section 2383 (1992 & Supp. 2001) and the arbitrary enforcement of that law, issues that he has raised in prior litigation", 1A.

The Maine Supreme Judicial Court is reaffirming its past decision that "Dee's allegations do not implicate the denial of any of his fundamental rights." This decision also said "there is no indication that Dee is being prosecuted for any violation of the laws he challenges, *Dee v. Attorney General*, Decision No. Mem. 99-59, (April 30, 1999), 6A.

The federal question with regards to the violation of due process guaranteed by the 14th Amendment of the United States Constitution was timely and properly raised. This Court has jurisdiction to review the judgment on a writ of certiorari.

REASONS FOR GRANTING WRIT

1. Conflicting Decision

The Maine Supreme Judicial Court has decided important federal question in away that conflicts with relevant decisions of this Court. The Maine Supreme Judicial Court has declared that it is legal for the police to use arbitrary power over life liberty and property rights in the enforcement of the marijuana laws.

The Maine Supreme Judicial Court is saying the arbitrary law enforcement of the marijuana laws does not contravene the fundamental right to due process of law, guaranteed by the 14th Amendment of the United States Constitution.

The 14th Amendment protects parties from unjustifiable discriminating application of law. "Discriminating application of the law by government can constitute denial of due process. Touchstone of due process is protection of individual

against arbitrary action of government". *Wolff v. McDonnell* (1974) 418 U.S. 539, 94 S.Ct. 2963. "Due process of law, within the meaning of Fourteenth Amendment is secured if laws operate on all alike, and do not subject individual to arbitrary exercise of powers of government." *Duncan v. Missouri* (1894) 152 U.S. 377, 14 S.Ct. 570.

"The party opposing the class has refused to act on grounds generally applicable to the class, thereby making appropriate final declaratory relief with respect to the class as a whole." *Rules of Civil Procedure* No. 23(b)(2).

2. Denies Equal Justice Under the Law

The Maine Supreme Judicial Court has departed from the accepted and usual course of judicial proceedings by dismissing declaratory judgment actions because "there is no indication that Dee is being prosecuted for any violation of the laws he challenges". *Dee v. Attorney General*, Decision No. Mem. 99-59, (April 30, 1999), 6A. The court's decision violates fundamental rights to due process of law and equal protection of the law guaranteed by the 14th Amendment.

The enforcement of the marijuana laws abridge the privileges and immunities of citizens of the United States by depriving life, liberty, and property which are protected by the 14th Amendment. "Property is more than mere thing which a persons owns, it includes the right to acquire, use and dispose of it, and the constitution, in the Fourteenth Amendment protects theses essential attributes," *Buchanan v. Warley* (1917) 245 U.S. 60, 38 S.Ct.16.

Due process clause of the Fourteenth Amendment raises no impenetrable barrier to taking of person's possession, liberty or life, procedural due process rules are meant to protect persons not from deprivation, but from mistaken or unjustified deprivation of life, liberty and property, *Carey v. Piphus* (1978) 435 U.S. 247, 98 S.Ct. 1042.

Declaratory judgment action is designed precisely to give one potentially a defendant in a prosecution, access to judicial determination prior to actual prosecution when facts indicate a sufficient basis for his belief that conduct he deems protected under the Constitution will subject him to such prosecution. *Zwicker v. Koota* D.C.N.Y.(1967) 389 U.S. 241, 88 S.Ct. 391, on remand (ED NY) 290 F. Supp. 244 reversed on other grounds, 394 U. S. 103, 89 S.Ct.956.

3. Arbitrary Classification

The Maine Supreme Judicial Court has decided an important federal question in away that conflicts with the decision of the Alaska Supreme Court. The Alaska Supreme Court said marijuana is constitutionally protected by Amendment 1, 4, and 14 of the United States Constitution. "No adequate justification exists for State intrusion into a citizen's right to privacy by its prohibition of the possession of marijuana by an adult for personal consumption in the home and thus possession of marijuana by adults at home for personal use is constitutionally protected." *Ravin v. State of Alaska* 537 P.2d 494, at 495 (1975).

Where there is a significant encroachment upon personal liberty, the state may prevail only upon showing a subordinating interest which is compelling. *Roe v. Wade*, 410 U.S. 113, 155, 93 S.Ct. 705, 35 (1973). The Alaska Supreme Court is saying marijuana is safe to use by adults at home without medical supervision.

Marijuana does not meet the safety of use criteria to be a schedule I controlled substance, 21 U.S.C. section 812(b)-(1)(C). "Schedule I drugs are subject to the most severe controls; they are deemed the most dangerous substances, possessing no redeeming value as a medicines". *Alliance for Cannabis Therapeutics v. D.E.A.*, 930 F2d 936, at 937. (D.C. Cir. 1991). Law enforcement keeps marijuana illegal because

it has no medicinal use.

The federal classification of marijuana as a controlled substance is arbitrary and violates due process of law.

CONCLUSION

Criminal laws cause injury to fundamental rights. The criminalization of marijuana has been based on the rational basis test by the federal courts because marijuana is not a fundamental right. Marijuana is a political question.

The lower courts are rebellious towards marijuana. The courts refuse to recognize the enforcement of the marijuana laws violate fundamental rights to life, liberty and property protected by the 14th Amendment, A7.

The arbitrary classification and arbitrary enforcement of the marijuana laws violates due process.

The facts are simple and very clear. This is an area of the law badly in need of the Supreme Court authoritative voice. The law in question requires the courts to use strict scrutiny. The marijuana laws are repugnant to the Constitution of the United States. Freedom is a myth.

The decisions of the Maine Supreme Judicial Court is plainly wrong and inconsistent with applied Supreme Court doctrine.

The Court should grant the Writ of Certiorari.

Respectfully submitted,

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MAINE SUPREME JUDICIAL COURT

Reporter of Decisions
Decision No. Mem 02-01
Docket No. Cum-01-489

MICHAEL J.DEE
v.
STATE OF MAINE

Submitted on Briefs December 20, 2001
Decided January 16, 2002

Panel: Saufley, C.J. and Clifford, Rudman, Dana and Alexander, JJ.

MEMORANDUM OF DECISION

Michael J. Dee appeals from a judgment on the pleadings in favor of the State of Maine entered in the Superior Court (Cumberland County Crowley, J.). Contrary to Dee's contentions, the court correctly determined that Dee is precluded from relitigating the constitutionality of the laws prohibiting possession of marijuana, *see* 22 M.R.S.A section 2383 (1992 Supp. 2001) and the arbitrary enforcement of that law, issues that he has raised in prior litigation. *See Beegan v.Schidt*, 451 A.2d 642, 643-44 (Me.1982; *see also Cline v. Maine Coast Nordic*, 1999 ME 72, par. 9, 728 A.2d 686, 688.

The entry is:

Judgment affirmed.

State of Maine
Cumberland,ss.

Superior Court Civil Action
Docket No. CV-00-648

Michael J. Dee,
Plaintiff
v.
State of Maine,
Defendant

DECISION AND ORDER

FACTUAL BACKGROUND

On October 27,1999, plaintiff Michael Dee waved a marijuana plant at traffic while standing at Morrill's Corner in Portland. Although two Portland Police officers allegedly told Dee to stay out of the street or they would arrest him, they did not arrest or summons him or seize his marijuana plant.

The plaintiff's complaint seeks a declaratory judgment that arbitrary enforcement of the statute that makes possession of marijuana a civil violation, 22 M.R.S.A. 2383 (1) (Supp.2000), violates due process of law and that 22 M.R.S.A. 2383 (1) is unconstitutional. In addition to the plaintiff's motion for summary judgment, both parties have filed motions for judgment on the pleading pursuant to M.R. Civil P.12(c). For the following reasons, the plaintiff's motions are denied and judgment is entered in favor of the defendant.

DISCUSSION

The Doctrine of *res judicata*, "a court-made collection of rules designed to ensure that the same matter will not be litigated more than once," operates as a bar to the plaintiff's action. Camps v. Newfound / Owatonna v. Harrison, 1998 ME 20 par.11, 705 A.2d 1109, 1113 (quoting Machais Sav. Bank v. Ramsdell, 1997 ME 20, 11, 689 A.2d 595, 599).

There are two types of *res judicata*: issue preclusion, or collateral estoppel, and claim preclusion, or doctrine of bar. In re Kaleb D., 2001 ME 55, par. 7, _ A.2d_. Claim preclusion prohibits relitigation of an entire cause of action. Id. par. 8. Collateral estoppel, the branch of *res judicata* applicable to this case, "prevents the relitigation if factual issues already decided if 'the identical issues was determined by a prior final judgment, and the party estopped had a fair opportunity and incentive to litigate the issue in a prior proceeding.' " Cline v. Maine Coast Nordic, 1999 ME 72, par.9, 728 A.2d 686, 688 (quoting Perry v. H.O.Perry & Son, Co., 1998 ME 131, par. 6, 711 A.2d 1303, 1305).

In this action, the plaintiff seeks a declaratory judgment that 22 M.R.S.A. sec. 2383 (1) is unconstitutional. The plaintiff is collaterally estopped from relitigating this issue because an identical issue was determined by a prior final judgment and Mr. Dee had a fair opportunity and incentive to litigate the constitutionality of the marijuana law in that prior proceeding. See Dee v Ketterer, CV -97 763 (Me. Super. Ct., Cum. Cty., July 9, 1998)(Calkins, J.), Aff'd sub nom. Dee v. Attorney General, No. 99-59 (Me. April 30,1999) (mem); see also Dee v. Reno, No. 95-29- P-H (D. Me. Sept 11,1995), aff'd, 82 F.3d 403)(1st Cir. 1996).

The plaintiff's petition also fails to demonstrate the existence of a justiciable controversy. Mr. Dee may invoke the Uniform Declaratory Judgment Act only if there is a genuine controversy, that is, if the case is ripe for judicial consideration and action. See Patron Oxford Mut. Ins.Co. v. Garcia, 1998 ME 38, par. 4, 707 A.2d 384, 385.

The plaintiff claims the Portland Police violated due process of law by arbitrary refusing to seize the plaintiff's marijuana and failing to issue him a summons to appear in court for violating 22 M.R.S.A. 2383 (1). Mr. Dee has neither "set forth a claim of right or obligation buttressed by

a sufficiently substantial interest to warrant judicial protection." nor "assert[ed] it against a defendant having an adverse interest in contesting it." Help- U-Sell, Inc. v. Maine Real Estate Comm'n 611 A2d 981, 983 (Me 1992) (quoting All State Ins. Co. v. Lyons, 400 A.2d. 349, 351(Me.1979)) Whether the plaintiff should have been summonsed by the Portland Police for possessing the marijuana plant is insufficient to established a real controversy between him and the State of Maine. Mr. Dee also has not asserted his claim against a defendant having an adverse interest in contesting this claim.

The entry is

Plaintiff's motions for judgment on the pleadings and summary judgment are DENIED.

Defendant's cross-motion for judgment on the pleadings is GRANTED.

Dated at Portland, Maine this 10th day of April, 2001.

"s/_____"
Robert E. Crowley
Justice, Superior Court

COMPLAINT

State of Maine
Cumberland,ss.

Superior Court Civil Action
Docket No. CV-00-648

Michael J. Dee,
Plaintiff
v
State of Maine
Defendant

Petition for Declaratory Judgment and Declaratory Relief Me.Rs. C.P.No. 57

1. I, Michael J. Dee, as a legal right, petition the Superior Court for declaratory Judgment which exist pursuant to Chapter 707 Declaratory Judgment Act, Title 14 M.R.S.A. -5951, 5953, 5954, 5957 et seq.

2. Plaintiff claims injury to fundamental rights protected by Article I section 6A of the Maine Constitution and the 14th Amendment of the United States Constitution.

3. Plaintiff claims Portland Police department used arbitrary power in the enforcement of Title 22 M.R.S.A. 2383 (1)(1992) at Morrill's Corner on October 27, 1999.

4. Plaintiff claims Portland Police department used arbitrary power in the enforcement of Title 22 M.R.S.A. 2383 (1)(1992) in Portland on November 1,1999.

5. Plaintiff claims Portland Police department used arbitrary power in the enforcement of Title 22 M.R.S.A. 2383 (1)(1992) in Portland on February 9 2000.

6. Plaintiff claims arbitrary power violates fundamental right to due process of law.

7.Plaintiff claims the State of Maine lacks a compelling state interest to violate due process.

8. Plaintiff claims Title 22 M.R.S.A. 2383 (1)(1992) is unconstitutional.

Wherefore, Plaintiff request this court for the following relief:

To declare the arbitrary enforcement of Title 22 M.R.S.A. section 2383 (1)(1992) violates due process of law. To declare Title 22 M.R.S.A. section 2383 (1)(1992) unconstitutional.

Dated October 31, 2000

Respectfully submitted
"s/_____"
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MAINE SUPREME JUDICIAL COURT

Reporter of Decisions
Decision No. Mem 99-59
Docket No. Cum-98-588

MICHAEL J.DEE
v
ATTORNEY GENERAL

Submitted on Briefs April 15, 1999
Decided April 16, 1999

Panel: Wathen C.J. and Clifford, Rudman, Dana, Saufley and Alexander, JJ.

MEMORANDUM OF DECISION

Michael J. Dee appeals from a judgment entered in the Superior court (Cumberland County, Caukins J.) dismissing his complaint for declaratory judgment. Dee's complaint for declaratory judgment challenges the constitutionality of two Maine statutes regarding the possession and furnishing of marijuana, 17-A M.R.S.A. sec.1106(3)(A) (1983 & Supp. 1998) (provides for presumption of unlawful furnishing for possession of more than 1 1/4 ounces of marijuana), and 22 M.R.S.A. sec. 2383(1)(1992) (provides for civil violation for possession of usable amount of marijuana). Dee's allegations do not implicate the denial of any of his fundamental rights. see United States v. Fry 787 F2d 903, 905 (4th Cir 1986) and there is no indication that Dee is being prosecuted for any violation of the laws he challenges. Accordingly, the court acted within its discretion in dismissing the complaint, Dodge v. Town of Norridgewock, 577 A2d 346, 347 (Me. 1990).

The entry is:

Judgment affirmed

MAINE SUPREME JUDICIAL COURT

Reporter of Decisions
Decision No. Mem 01-59
Docket No. Ken-01-78

STATE OF MAINE
v.
MICHAEL J.DEE

Submitted on Briefs June 25, 2001
Decided June26, 2001

Panel: Wathen C.J. and Clifford, Rudman, Dana, Saufley and Alexander, JJ.

MEMORANDUM OF DECISION

Michael J.Dee appeals the judgment entered in the Superior Court (Kennebec County, *Atwood J.*) affirming the judgment of the District Court (*Augusta, Worth, J.*) which found him guilty of the possession of a usable amount of marijuana, in violation of 22 M.R.S.A. section 2283(1) (Supp. 2000). Contrary to Dee's contentions, 22 M.R.S.A. section 2283 does not contravene the fundamental rights protected by the Fourth and Fourteenth Amendments of the U.S. Constitution, nor does the statute violate their counterparts in the Maine Constitution -Article I sections 1, 5, and 6-A. *See Dee v. Attorney General*, Mem. 99-59 (Me. 1999); *United States v. Fry*, 787 F.2d 903, 905 (4th Cir. 1986) cert. denied ,479 U.S. 861, 107 S. Ct 209, (3 L.Ed.2d139 (1986): *Rupert v. City of Portland*, 605 A.2d 63, 66 (Me 1992).

The entry is:

Judgment affirmed.